

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 8, 2022

3:03 p.m.

DRAFT

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Matt Claman, Vice Chair
Representative Geran Tarr
Representative Andi Story
Representative Sarah Vance
Representative James Kaufman
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 142

"An Act relating to eligibility for the permanent fund dividend."

- HEARD & HELD

HOUSE BILL NO. 94

"An Act prohibiting the use of certain restrictive provisions in leases of space for business use in certain federally established zones; and adding an unlawful act to the Alaska Unfair Trade Practices and Consumer Protection Act."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 142

SHORT TITLE: PFD ELIGIBILITY

SPONSOR(S): REPRESENTATIVE(S) MCCARTY

03/20/21	(H)	READ THE FIRST TIME - REFERRALS
03/20/21	(H)	STA, JUD, FIN
04/09/21	(H)	STA REFERRAL MOVED TO AFTER JUD
04/09/21	(H)	BILL REPRINTED

04/21/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/21/21	(H)	Heard & Held
04/21/21	(H)	MINUTE(JUD)
04/26/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/26/21	(H)	Moved CSHB 142(JUD) Out of Committee
04/26/21	(H)	MINUTE(JUD)
04/28/21	(H)	JUD RPT CS(JUD) NEW TITLE 3DP 2NR 1AM
04/28/21	(H)	DP: SNYDER, KREISS-TOMKINS, CLAMAN
04/28/21	(H)	NR: EASTMAN, DRUMMOND
04/28/21	(H)	AM: VANCE
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	Heard & Held
04/29/21	(H)	MINUTE(STA)
05/04/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/04/21	(H)	Heard & Held
05/04/21	(H)	MINUTE(STA)
05/19/21	(H)	FIN AT 9:00 AM ADAMS 519
05/19/21	(H)	-- MEETING CANCELED --
02/08/22	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 94

SHORT TITLE: PROHIBITED COMMERCIAL LEASE PROVISIONS

SPONSOR(S): REPRESENTATIVE(S) FOSTER

02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, L&C
05/18/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/18/21	(H)	Heard & Held
05/18/21	(H)	MINUTE(STA)
02/08/22	(H)	STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE KEN MCCARTY

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Reintroduced HB 142, as the prime sponsor.

COREY BIGELOW, Operations Manager

Permanent Fund Dividend Division

Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on CSHB 142(JUD).

PAUL LABOLLE, Staff

Representative Neal Foster

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Reintroduced HB 94, on behalf of Representative Foster, prime sponsor.

TERRY BANNISTER

Legislative Legal Services

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 94.

ACTION NARRATIVE

[3:03:46 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:03 p.m. Representatives Vance, Kaufman, Claman, Story, and Kreiss-Tomkins were present at the call to order. Representatives Eastman and Tarr arrived as the meeting was in progress.

HB 142-PFD ELIGIBILITY

[3:05:26 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 142, "An Act relating to eligibility for the permanent fund dividend." [Before the committee was CSHB 142(JUD).]

[3:06:02 PM](#)

REPRESENTATIVE KEN MCCARTY, Alaska State Legislature, reintroduced HB 142, as the prime sponsor. He presented the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

Committee Substitute for House Bill 142 (CSHB 142) limits the Permanent Fund Dividend (PFD) eligibility of active-duty military members to those who are physically stationed in Alaska only.

This bill eliminates the allowable absence in AS 43.23.008(3)(A) of a member serving on active duty in the Military in the United State Armed Forces, and

their dependents, stationed in another state or country.

CSHB 142 specifies an allowable absence of a member serving on active duty in the U.S Military, who is stationed in the State of Alaska, but is, or has been, out of the state on deployment orders or a temporary duty assignment (TDY.)

Future intent is a difficult thing to presume and define. Because of this, CSHB 142 also eliminates the allowable absence eligibility criteria listed in As. 43.23.008(e) that requires the Department of Revenue, Permanent Fund Division to consider factors that show an absent applicant's intention of returning to the state indefinitely in the future after a permanent change of station (PCS). Those considerations would no longer be included in determining eligibility of military service members, or their family members, who have moved out of state.

It is the sponsor's intent that every eligible Alaskan who currently and physically resides in the state of Alaska receive a PFD. Alaskans serving in the Military, and their dependents, who have physically moved out of the state will no longer be eligible to receive a PFD until they return to, and reside in, Alaska once again.

In 2018 the state dispersed 3,096 dividends to service members who were out of the state more than 180 days, who may or may not return someday, distributing over \$4,900,00 out of state. CSHB 142 will ensure that Alaska PFD monies are reserved for Alaskans who currently and physically reside within the state of Alaska.

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REPRESENTATIVE MCCARTY deferred to the Permanent Fund Dividend Division ("the division") to discuss some developments that occurred since the committee last heard the bill.

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COREY BIGELOW, Operations Manager, Permanent Fund Dividend Division, expressed the division's concern that the repeal

language included in CSHB 142(JUD) could impact more than the intended group of Alaskans. He asked whether the committee would like to hear the specifics of this issue.

REPRESENTATIVE CLAMAN confirmed that he would like to hear the specifics.

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MR. BIGELOW addressed the repeal of AS 43.23.005(f), which has two [paragraphs]: paragraph (1) authorizes the commissioner to waive the requirement of a(4); paragraph (2) speaks to individuals in the custody of the Department of Health and Social Services (DHSS). He recommended that paragraph (2) [AS 43.23.005(f)(2)] be excluded from the repeal language.

CHAIR KREISS-TOMKINS sought to confirm that AS 43.23.005(f)(2) refers to individuals in the custody of DHSS in accordance with a court order; therefore, excluding that provision from the repeal language would preserve the commissioner's prerogative to wave the durational residency requirement in order for such persons to qualify for the permanent fund dividend (PFD). He asked if that is accurate.

MR. BIGELOW answered yes.

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REPRESENTATIVE CLAMAN sought to confirm that the division's intent is to repeal AS 43.23.005(f)(1), thereby keeping AS 43.23.005(f)(2).

MR. BIGELOW answered yes.

[3:15:39 PM](#)

REPRESENTATIVE MCCARTY clarified that his intent is not to repeal AS 43.23.005(f) at all. He proceeded to summarize the [proposed] changes to the bill in its current form.

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REPRESENTATIVE CLAMAN pointed out that both the division and the bill sponsor have conveyed suggested changes. He opined that this method of editing seems difficult. He recommended that the bill sponsor present a new CS that incorporates the desired changes.

CHAIR KREISS-TOMKINS said he's open to that suggestion. He shared his belief that these statutes are poorly written and convoluted, which makes the process more challenging than it would otherwise be. He deferred to the division to innumerate its input.

REPRESENTATIVE MCCARTY agreed to this method.

CHAIR KREISS-TOMKINS pointed out that AS 43.23.005(f)(2) had already been addressed by Mr. Bigelow. He invited Mr. Bigelow to continue relaying the division's thoughts on the bill.

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MR. BIGELOW obliged. He recalled that in addition to AS 43.23.005(f)(2), the division had conveyed concern about AS 43.23.008(e), which speaks specifically to determining an individual's intent. He acknowledged that determining a person's intent is difficult; however, the statute allows a "benchmark," or a way to measure by requesting documentation to show that the individual has taken an action consistent with establishing or maintaining residency in Alaska. He explained removing the intent would potentially allow for more Alaskans to be determined as eligible for the PFD because the intent portion would no longer be required. He reiterated that the intent would be to broaden the pathway whereas currently, the bill would restrict the pathway for a specific group of individuals.

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REPRESENTATIVE CLAMAN sought to confirm that the division's recommendation with respect to the bill is not to repeal AS 43.23.008(e).

MR. BIGELOW confirmed.

[3:23:10 PM](#)

REPRESENTATIVE TARR said she was having trouble finding AS 43.23.008(e).

CHAIR KREISS-TOMKINS read AS 43.23.008(e) as follows: "to determine whether an individual intends to return and remain in the state indefinitely, the department shall consider all relevant factors including..." followed by a variety of factors. He reiterated that the statutes are rather long and unwieldy.

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REPRESENTATIVE CLAMAN inquired about the department's position on the repeal of AS 43.23.005(a)(4).

MR. BIGELOW opined that the AS 43.23.005(a)(4) would be "the ideal location to (indisc.) the language."

REPRESENTATIVE CLAMAN sought to confirm that for the purposes of the bill, AS 43.23.005(a)(4) should be repealed.

CHAIR KREISS-TOMKINS shared his understanding that in order to fulfill the intent put forward by Representative McCarty, the division's analysis is that repealing AS 43.23.005(a)(4) would be consistent with that intent.

MR. BIGELOW confirmed that utilizing or potentially amending AS 43.23.005(a)(4) would be the bill sponsor's best route for reaching his desired intent.

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REPRESENTATIVE TARR questioned whether consolidating the individual allowable absences under AS 43.23.005(a)(4) would be the recommended method.

MR. BIGELOW believed that amending the language on page 2, lines 8-11, would be the best way to achieve the bill sponsor's desired intent.

[3:28:42 PM](#)

CHAIR KREISS-TOMKINS invited Representative McCarty to speak on how the intent of the bill evolved over the interim.

REPRESENTATIVE MCCARTY conveyed that the intent of the bill is to stop people who have left the state from collecting a dividend. He said currently, an individual can leave the state and depend on his/her "intent" to return to qualify for a dividend. He directed attention to page 2, lines 7-13, indicating that military members who are away on TDY or deployment should still receive a dividend; however, if a military member is moving to another base outside of Alaska, he/she should not longer be able to continue claiming residency.

CHAIR KREISS-TOMKINS asked whether the sponsor had considered mirroring existing residency requirements for hunting and fishing residency licenses or other well-vetted, well-established residency thresholds for other definitions of state residency.

REPRESENTATIVE MCCARTY said he had inquired about residency as it pertains to elections.

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CHAIR KREISS-TOMKINS invited closing questions from committee members.

REPRESENTATIVE TARR inquired about the provision pertaining to employment in the aviation industry and how that would be prioritized in relation to the military provision.

REPRESENTATIVE MCCARTY acknowledged that the primary intent of the bill is to address military members who moved out of state.

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CHAIR KREISS-TOMKINS announced that CSHB 142(JUD) would be held over.

HB 94-PROHIBITED COMMERCIAL LEASE PROVISIONS

[3:35:36 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 94, "An Act prohibiting the use of certain restrictive provisions in leases of space for business use in certain federally established zones; and adding an unlawful act to the Alaska Unfair Trade Practices and Consumer Protection Act."

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PAUL LABOLLE, Staff, Representative Neal Foster, Alaska State Legislature, on behalf of Representative Foster, prime sponsor, explained that HB 94 would prohibit contract clauses that prevent or limit either party's ability to participate in business that compete with the other party. In essence, it would add noncompete clauses to Alaska's Unfair Trade Practices for lease agreements in HUBZones. He noted that "HUBZones" are

defined by the United State Small Business Administration (SBA) under 15 U.S.C. 657a (HUBZone Act of 1997).

CHAIR KREISS-TOMKINS asked Mr. Labolle whether he wanted to make any additional refresher comments on the bill.

MR. LABOLLE addressed questions from the previous bill hearing pertaining to HUBZones and where they are located. He noted that at that time they were under review; however, that process has been frozen until June 30, 2023, due to pending U.S. Census data.

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REPRESENTATIVE VANCE inquired about the specific instance that highlighted the need for this legislation.

MR. LABOLLE conveyed that the local Native corporation in Mountain Village had entered into a lease agreement with Alaska Commercial (AC) Company; however, due to the noncompete clause, they couldn't open a smaller store that would compete with AC. He explained that in rural areas, it's hard enough to get competition to begin with because the population base is so low. He said the added barrier to competition is what the bill hopes to remove.

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REPRESENTATIVE CLAMAN asked whether this legislation raises any equal protection issues.

TERRY BANNISTER, Legislative Legal Services, confirmed that it does raise equal protection issues as everyone would not be treated equally.

REPRESENTATIVE CLAMAN pointed out that the population within the HUBZone would be treated the same and the population outside the HUBZone would be treated the same. He questioned why that doesn't resolve the equal protection issue.

MS. BANNISTER remarked "Because the people outside the zone are treated differently than the people inside the zone."

REPRESENTATIVE CLAMAN contended that the equal protection problem would be a federal issue, as it pertains to the HUBZones.

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MS. BANNISTER said she had not examined federal law on the HUBZones yet.

REPRESENTATIVE CLAMAN asked whether there are issues related to delegation of authority to the federal government.

MS. BANNISTER answered yes. She said the bill depends on establishing operation of the HUBZones, which is a federal activity. She added that Alaska provisions would depend on the federal government's actions as they relate to the HUBZones. Therefore, the issue of delegating authority to the federal government is raised.

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CHAIR KREISS-TOMKINS asked whether ultimately, these are constitutional problems.

MS. BANNISTER answered yes. She noted that the equal protection issue also concerns local and special legislation, which is a state constitutional issue. Further, she said, "the improper delegation would be the activity that the legislature is allowed to perform their activities," which is ultimately a constitutional issue.

CHAIR KREISS-TOMKINS asked Ms. Bannister to speak to the local and special legislation consideration.

MS. BANNISTER stated that the bill would only apply to HUBZones in certain areas of the state. She explained that a provision in the constitution indicates that the legislature cannot pass a law that only applies locally. Alternatively, a general law could be made applicable at the will of the courts. She added that if the courts would decide whether the bill bears a fair and substantial relationship to legitimate state purposes.

CHAIR KREISS-TOMKINS asked Ms. Bannister to opine on whether the legislation bears a fair and substantial relationship to legitimate state purposes.

MS. BANNISTER said she has no opinion at this time.

CHAIR KREISS-TOMKINS asked whether she has an opinion on the broader constitutionality of the bill.

MS. BANNISTER answered no. She said she didn't have enough time to consider the facts.

CHAIR KREISS-TOMKINS sought to confirm that she was just flagging them as issues.

MS. BANNISTER confirmed that she was merely bringing attention to issues that may be raised.

[3:45:08 PM](#)

REPRESENTATIVE CLAMAN asked whether the constitutional issues that have been identified are state related or federal constitutional issues.

MS. BANNISTER said the equal protection issue might raise a problem with federal legal protection laws.

REPRESENTATIVE CLAMAN asked whether Ms. Bannister agrees that the Alaska equal protection provisions are stronger than the federal equal protection provisions.

MS. BANNISTER answered yes.

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REPRESENTATIVE VANCE asked where the HUBZones are located in Alaska.

MR. LABOLLE said HUBZones cover all of Alaska for different reasons. Generally speaking, he said, Anchorage, Mat-Su, and Fairbanks are the areas outside the HUBZones.

REPRESENTATIVE VANCE sought to confirm that it's the bill sponsor's interpretation that the bill would not conflict with Alaska statutes.

MR. LABOLLE said the thought process behind the bill is that equal protection provisions can be violated if there is a compelling state interest. In this case, he indicated that the compelling interest would be socioeconomic. He added that the bill sponsor stuck with the federally defined HUBZones rather than site specific ones in consideration of the special legislation provision.

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REPRESENTATIVE EASTMAN directed attention to Section 2 and asked why not make the law apply to every area of the state, as opposed to only in HUBZones.

MR. LABOLLE said the bill sponsor wouldn't be opposed to that if it is the will of the committee. He explained that Representative Foster is looking at the issue from a rural-centric perspective and didn't want to involve Anchorage; however, if Anchorage, Mat-Su, and Fairbanks wanted to be included, it wouldn't pose any problems.

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CHAIR KREISS-TOMKINS asked whether Sitka and Homer would be affected by the geographic scope of the proposed legislation.

MR. LABOLLE offered to follow up with that information.

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REPRESENTATIVE CLAMAN, in response to Representative Eastman, surmised that if Anchorage, Fairbanks, and Mat-Su were included, property owners would want to control who's on their property. For example, if the bill were to pass and a quick-stop convenience store was required to go up in a mall wherein Fred Meyer was located, Fred Meyer would be concerned with that, he opined. He shared his belief that it's different in a small community that only has one strip of stores owned by a single landlord.

CHAIR KREISS-TOMKINS, in reference to the HUBZones Map located on the SBA website asked, "What is designated by the red, Mr. Labolle?"

MR. LABOLLE said the red indicates that the HUBZone is qualified as a county.

CHAIR KREISS-TOMKINS sought to confirm that red signifies a HUBZone.

MR. LABOLLE replied, "Not just red." He provided a brief explanation of how to use the interactive map.

CHAIR KREISS-TOMKINS returned to his original question, asking whether Sitka and Homer are qualified HUBZones.

MR. LABOLLE confirmed that they are both in HUBZones.

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REPRESENTATIVE KAUFMAN suggested that there could be unintended consequences that may dampen businesses' interest in an area. He opined that monopolies aren't good unless it's the only way to get goods and services into an area.

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REPRESENTATIVE EASTMAN suggested that a geographically neutral way to write the bill would be to base the limitations on the size of the business involved or the number of locations it has.

MR. LABOLLE said he is unfamiliar with any statutes that use that specific categorization. He said another route to consider would be by population size.

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REPRESENTATIVE VANCE urged further consideration of the impacts to the affected boroughs or municipalities.

MR. LABOLLE acknowledged that if the committee decided to look at alternate methods of application, that would be an important consideration.

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REPRESENTATIVE EASTMAN said he is always reticent of referencing federal law in state statute because it is subject to change in the future. He conveyed that he would be more amenable to implementing the legislation without a reference to HUBZones due to the level of uncertainty.

MR. LABOLLE confirmed that he would be following up on the issue of delegating authority to the federal government. He further acknowledged that the HUBZones are subject to change, as they are reassessed every five years.

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CHAIR KREISS-TOMKINS announced that HB 94 would be held over.

[3:58:12 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:58 p.m.